

5I - SECTION 105 and 105c SCHOOLS of CHOICE PUPILS

Accepting nonresident pupils under Sections 105 and 105c Schools of Choice is a district decision. The district must determine if the schools of choice will be specific to a building, a grade level, or a program. The district must also determine if the district will accept pupils from districts within the ISD boundaries (Section 105), accept pupils from districts within the boundaries of an ISD that is contiguous to the ISD of the enrolling district (Section 105c), or both. The district shall not charge tuition for pupils who are enrolled under Section 105 or Section 105c. The resident district's approval is not required for pupils enrolled under Sections 105 and 105c.

A. Pre-enrollment Requirements of the District

The district must abide by specific time-lines and comply with specific criteria in the application and selection process. Failure to meet the requirements under Sections 105 and 105c may result in a state school aid penalty.

1. A district having a limited number of spaces and enrolling Section 105 or Section 105c nonresident pupils must do the following:
 - U Provide notice to the general public that applications will be taken for a 15-day period from nonresidents for enrollment in specified grades, specified school, and/or specified program.
 - U The notice shall identify the 15-day period and the place and manner for submitting applications.
 - U During the application period accept applications from nonresidents for enrollment in that grade, school, or program.
 - U Within 15 days after the end of the application period, using the procedures and preferences stated in section 105 and 105c, determine which nonresident applicants will be allowed to enroll in that grade, school, or program through a random draw system if necessary.
 - U Notify the parent or legal guardian of each nonresident applicant of whether or not the applicant may enroll in the district.
 - U The notification to parents or legal guardian of nonresident applicants accepted for enrollment shall contain notification of the date by which the applicant must enroll in the district and the procedures for enrollment.
 - U Beginning on the third Monday in August and not later than the end of the first week of school, if any positions become available in a grade, school, or program due to accepted applicants failing to enroll or to more positions being added, the district may enroll nonresident applicants from the waiting list determined during the random draw, offering enrollment in the order that applicants appear on the waiting list.

Note: If there are still positions available after enrolling all applicants from the waiting

list who desire to enroll, the district may not fill those positions until the second semester.

2. A district having an unlimited number of spaces and enrolling Section 105 or Section 105c nonresident pupils must do the following:

- U Provide notice to the general public that applications will be taken from nonresidents for enrollment in specified grade, specified school, or specified program.
- U The notification shall provide information of the place and manner for submitting application and the application period must be at least 15 days.
- U The district may accept applications for enrollment until the end of the first week of school.
- U Not later than the end of the first week of school, the district shall notify the parent or legal guardian of each nonresident applicant who is accepted for enrollment in the grade, school, or program of the date by which the applicant must enroll in the district and the procedures for enrollment.

3. Not later than two weeks prior to the end of the first semester, the district shall publish the grade levels, school (building), or specific program, if any, for which enrollment for the second semester may be available. The district may receive applications during that two- week period. By the beginning of the second semester, using the random drawing and waiting list procedures as required under Sections 105 and 105c, the district shall determine which nonresident applicants will be allowed to enroll in the district. Notification to the parent or legal guardian shall specify which grade level, school (building), or specific program, if any, for which the applicant has been accepted and the date by which the applicant must enroll in the district and the procedure for enrollment.

B. Other Specific Regulations Under Sections 105 and 105c

A district may limit the number of nonresident pupils it accepts in a grade level, school (building), or specific program, if any, and may use that limit as the reason for refusal to enroll an applicant. However, a district may not grant or refuse enrollment to an applicant based on:

- U A pupil's intellectual, academic, artistic, or other abilities, talents, or accomplishments, or lack thereof.
- U The pupil's mental or physical disabilities, except that the applicant does not meet the criteria (other than residency) that a resident must meet to be accepted for enrollment in a grade level or a specialized magnet, or intra-district choice school or program, for which the applicant applies.
- U A pupil's age, except for a program that is not appropriate for the age of the applicant.
- U The pupil's religion, race, color, natural origin, sex, height, weight, marital status, or athletic ability, or generally, in violation of a state or federal law prohibiting discrimination.

A district **may** refuse to enroll a nonresident applicant if that applicant is, or has been suspended or expelled from another district within the preceding two years.

C. Eligibility to Count the Nonresident Pupil for Membership

1. A local school district that elects to enroll pupils under Sections 105 or 105c **Schools of Choice program** may count a nonresident pupil in membership if the district has evidence that the pupil meets **one** of the following criteria:
 - U The pupil is a nonresident, but is a resident of another district within the same ISD. The local district may only count this pupil in membership if all Schools of Choice section 105 requirements have been met.
 - U The pupil is a nonresident, but is a resident of another district within an ISD that is contiguous to the educating district's ISD. The local district may only count this pupil in membership if all Schools of Choice section 105c requirements have been met.
 - U The pupil was enrolled in and attended the district in the school year immediately preceding the school year in question under 105 or 105c. A district shall give preference to this pupil, along with other school-age children who reside in the same household as the pupil.
 - U The pupil is a nonresident but has been enrolled continuously in the district since a year in which the district enrolled nonresident pupils in accordance with Section 105 or 105c.
 - U The pupil was enrolled in and attended school in the district as a nonresident pupil in the 1995-96 school year and continues to be enrolled each school year in that district. The district shall allow this nonresident pupil to continue to enroll in and attend school in the district until high school graduation without requiring the pupil to apply for enrollment in the Schools of Choice program.
2. A local school district that enrolls a **special education pupil under a Schools of Choice program** will become that pupil's resident district for purposes of developing and implementing an individualized education plan (IEP), and will become responsible for the education of and providing (or arranging for the provision of) services for the pupil. Section 105c (contiguous) contains an additional requirement that the choice district must enter into a written cooperative agreement with the special education pupil's resident district as to the payment of added costs associated with the pupil's programs and as to how services will be handled.
3. A local school district may enroll and count in membership a nonresident pupil as a parent paid tuition pupil in those buildings and/or programs which are not designated as Choice programs; or may enroll and count in membership a nonresident pupil in a Choice program after the specific deadlines have passed. To count the pupil in membership, approval from the resident district must be obtained. This pupil is not considered a Schools of Choice pupil.
4. A local school district may participate in a cooperative education program with one or more local or intermediate districts in addition to operating a Schools of Choice program.

NOTE: Schools of Choice does not apply to a pupil residing in a district that does not operate all of the grades K to 12 (referred to as Non-K-12) and the pupil is enrolled in a district, other than the district of residence, in a grade that is not offered by the district of residence. (Such a pupil is reported in residency as a Non-K-12 pupil.)

NOTE: A district is not required to provide transportation for a nonresident pupil enrolled in the district under Sections 105 or 105c or for a resident pupil enrolled in another district under Sections 105 or 105c. However, at the time of enrollment, a district shall provide to the pupil's parent or legal guardian information on available transportation to and from the school in which the pupil enrolls.

D. Regulatory References

State School Aid Act
388.1705
388.1705c

Attorney General Opinion
7046 February 2000

Q #1

Mother enrolls her child in the PPI program and then moves out of the district. The mother continues to work in the district; and, grandma, who is the day care provider, resides within the district. An older brother to this child is enrolled in the district under Schools of Choice. Does the fact that brother is enrolled under schools of choice, mother works in the district, and grandma resides within the district entitle the preschooler to attend the PPI program in the district?

A #1

Section 105 and 105c entitle other K-12 pupils who reside in the household with a second year Schools Of Choice pupil to attend a district under Schools of Choice beginning in the second year of attendance; however, PPI is not a K-12 program and therefore does not qualify under this entitlement.

Q #2

A parent applied to enroll her high school age child in the district's alternative education program under section 105. The parent failed to disclose the information that this pupil had been expelled from the resident district. That information was revealed when the pupil's records were received from the resident district. May the district expel this pupil based upon the fact that the mother failed to disclose this information?

A #2

Yes. A district may choose to not enroll a pupil who has been suspended or expelled from the pupil's district of residence. Not having that information available at the time of enrollment, the district could not choose to not enroll this pupil under section 105. Therefore, the district may choose to expel the pupil at the time of disclosure.